

**REMARKS**

Applicants have amended claim 1 to incorporate the limitations of claim 4. Accordingly, claim 4 has been canceled. Claim 8, formerly dependant upon claim 4, has been amended to depend from claim 1.

Claims 16, 17, 18, and 46 have been amended to recite or clarify an articulating joint. Support for this amendment can be found throughout the specification, for example, on page 6, lines 9-12.

Claim 29 has been amended to correct an inadvertent typographical error. No new matter has been added.

Claim 49 has been amended to recite "articulation of the device." This amendment is supported throughout the specification, for example, on page 6, lines 9-12.

Claim 5 as originally filed has been rewritten in independent form as new claim 58. Thus, no new matter has been added.

Claims 1, 3, and 5-58 are now pending for examination.

**Rejection under 35 U.S.C. §102(b) in view of Tilton**

Claims 1, 3, 5-8, 15-46, and 49-57 were rejected under 35 U.S.C. §102(b) as being anticipated by Tilton, U.S. Patent No. 5,766,157 ("Tilton").

Regarding all claims rejected on this ground, Applicants do not see where in Tilton is a device including a unit capable of being interchanged during surgery suggested or disclosed. The Patent Office appears to be in agreement with this view, as the Patent Office notes that in Tilton, "all the units [are] irremovably attached to each other" (page 2 of the Office Action of June 3, 2003).

Claim 1 has been amended to include the recitation of claim 4, which does not stand rejected on this ground. Accordingly, claim 4 has been cancelled. For at least these reasons, the rejection of claim 1 and its dependant claims 5-8 and 12-15 on this ground has been overcome. Applicants do not agree that all claims depending from claim 1 did not distinguish Tilton prior to the amendment of claim 1, but it is not necessary to address these individual points here.

Regarding the remaining claims, Applicants also do not see where in Tilton is a cannula section disclosed or suggested. Furthermore, Tilton nowhere discloses or suggests endoscopic

surgery, nor does Tilton disclose or suggest replacing a first applicator section with a second applicator section during surgery. Tilton also does not disclose or suggest an articulating joint. Thus, it is respectfully requested that the rejection of claims 1, 3, 5-8, 15-46, and 49-57 be withdrawn for at least these reasons.

Rejection under 35 U.S.C. §102(e) in view of Cragg

Claims 1, 3, 4, 9-11, 15, and 20-45 were rejected under 35 U.S.C. §102(e) as being anticipated by Cragg, et al., U.S. Patent No. 6,146,373 ("Cragg").

The Office Action asserts that in Cragg, distal end cap 46 contains a hole which allows tube 14 to pass therethrough, hence the distal end cap allows for the exit of a fluid. However, Applicants note that fluid is not actually able to exit the distal end cap of this point. Instead, the distal end cap contains a hole that allows a tube to pass through, where the fluid exits from the end of the tube, not the distal end cap. Thus, the distal end cap is not an applicator. Additionally, Applicants do not see where in Cragg is endoscopic surgery disclosed or suggested, nor do Applicants see where in Cragg is a method including replacing a first applicator section with a second applicator section disclosed or suggested. Therefore, it is believed that Cragg does not anticipate the invention as claimed, and it is respectfully requested that the rejection of claims 1, 3, 4, 9-11, 15, and 20-45 be withdrawn for at least these reasons.

Rejection under 35 U.S.C. §102(e) in view of Miraki

Claims 1 and 15 were rejected under 35 U.S.C. §102(e) as being anticipated by Miraki, et al., U.S. Patent No. 6,248,092 ("Miraki").

Applicants do not see where in Miraki is the delivery of a fluid from a catheter disclosed or suggested. Instead, the catheters in Miraki are inflatable catheters (see, e.g., the Abstract). Miraki also does not appear to disclose an applicator section. Thus, it is believed that claims 1 and 15 are not anticipated by Miraki, and it is respectfully requested that the rejection of these claims be withdrawn for at least these reasons.

Rejection under 35 U.S.C. §102(b) in view of Lampropoulos

Claims 1, 12, 13, 20-45, 47, and 48 were rejected under 35 U.S.C. §102(b) as being anticipated by Lampropoulos, et al., U.S. Patent No. 5,817,072 ("Lampropoulos").

Claim 1 has been amended to include the recitation of claim 4, which does not stand rejected on this ground. For at least these reasons, the rejection of claim 1 and its dependant claims 12 and 13 on this ground has been overcome. Applicants do not agree that claims 12 and 13 did not distinguish Lampropoulos prior to the amendment of claim 1, but it is not necessary to address these individual points here.

With respect to claims 20-45, it is not clear why these dependent claims were rejected, as the independent claims from which they depend were not rejected in view of Lampropoulos. It is believed that claims 17 and 18 were correctly not rejected in view of Lampropoulos, and the inclusion of claims 20-45 in this rejection represents a typographical error. In particular, these claims were not previously rejected in view of Lampropoulos in the Office Action of September 12, 2002. Thus, it is believed that claims 20-45 are patentable, and it is respectfully requested that the rejection of these claims be withdrawn for at least these reasons.

Regarding independent claims 47 and 48, the Office Action has not responded to Applicants' statement that Lampropoulos does not disclose or suggest altering the catheter apparatus in between deliverings of a therapeutic agent. Instead, the Office Action merely restates and re-rejects the previous statement of the Applicants in the last response (filed March 11, 2003) that Lampropoulos fails to teach two or more units, at least one of which is capable of being interchanged during surgery. If the Patent Office intends to continue this rejection, then it is respectfully requested that it be specifically pointed out where, in Lampropoulos, each and every element of claims 47 and 48 is disclosed.

Withdrawal of the rejection of these claims for at least these reasons is requested.

### **CONCLUSION**

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicants' attorney at the telephone number listed below.

Serial No.: 09/744,698  
Conf. No.: 3328

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If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,  
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Docket No. F0397.70050US00  
Date: October 3, 2003  
x09/03/03